IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.227 OF 2007

Ms Zarinan G.Khanmahomed
(since deceased through L.R.)
1a Noorali G.Khanmahomed ...Applicant
vs.

Ms Flory Mary Gonsalves
(since deceased through L.R.)
1a Miss Opette Gonsalves ...Respondent

Mr.V.A.Thorat,Sr.Advocate with Ms J.P.Thakkar for Applicant
Mr.Pravin Shah for the Respondent.

CORAM: A.S.OKA,J.
DATE : JUNE 8, 2007.

P.C.:

1. Submissions of the learned senior Counsel for the Revision Applicants were heard yesterday. By this Revision Application under section 115 of the Code of Civil Procedure,1908 the challenge by the Revision Applicants is to the Judgment and Order passed by the Appeal Bench of the Small Causes Court. The Respondents-landlords filed a suit for eviction on various grounds. The suit was contested by the Revision Applicants. After the parties led evidence, the Trial Court decreed the suit filed by the Respondents. The learned Trial Judge recorded a finding that the tenant had acquired a suitable accommodation. A finding has also been recorded that the tenant had sublet the suit premises to a third party. The decree passed by the Trial Court has been confirmed in Appeal.

2. The learned senior Counsel appearing for the Revision Applicants invited my attention to the various findings

recorded by the Courts below. He stated that the ground of acquisition of suitable residence was incorporated subsequently by the Respondents by making an Application for amendment of plaint on 2nd January 1985. He submitted that the averments made in the Application for amendment as well as in the amended plaint show that all along the Respondents were aware that the tenant was not using the suit premises from the year 1978 onwards. He submitted that on the date on which the amendment was made, the same was barred by limitation. He also invited my attention to the finding recorded by the Appellate Court on the issue of acquisition of suitable residence. He pointed out that the Appellate Court has held that the Appellant No.1 in the Appeal had acquired suitable residence. He submitted that the Appellant No.1 was not the tenant and therefore, even if the finding is taken as it is, decree on the ground of acquisition of suitable residence could not have been passed. He submitted that in any event the alleged acquisition of flats was not in the name of the tenant. He submitted that for a limited period, the tenant allowed his close relative to reside in the suit premises. He submitted that there was no evidence on record to show the payment of any consideration by alleged sub tenant and finding on the issue of subletting is perverse.

3. I have considered the submissions. The suit was filed by the Respondents in the year 1976. The Application for amendment of the plaint was moved on 2nd January 1985 for

incorporating additional grounds of eviction. The additional grounds were of acquisition of suitable residence and subletting. The said Application was allowed on 12th October 1988. Though the amendment was allowed in the year 1988, the same will obviously relate back to the date on which the Application for amendment was filed. According to the material on record the acquisition of three flats was in the year 1974 and therefore, the application for amendment was moved within a period of 12 years from the date of acquisition. My attention was invited to the oral evidence of the Respondent No.1a. I find that there is hardly any cross examination of the said witness on the aspect of knowledge of acquisition. Therefore, there is no merit in the submission as regards bar of limitation.

4. The suit was filed against the original tenant Mrs.Zarinan. Her husband who is a Revision Applicant No.1a was examined as a witness. In his evidence, he admitted that three flats were acquired in Yuwan Co-operative Housing Society Ltd. and the said three flats were converted into one flat by spending a sum of Rs.8,000/- for renovation. The renovation was admittedly completed in the year 1974. The total area of the three flats is 1794 sq. ft. It was sought to be contended by the said witness that the flats were acquired in the name of the children. A finding of fact has been recorded that at the time of acquisition of the flats the eldest son of the tenant was 18 years old. It must be borne

in mind that the husband of the tenant deposed on her behalf in his capacity as a guardian. Once a case sought to be made out that the acquisition was in the name of the sons and when the said case is disbelieved, the courts below were justified in recording that the acquisition was by the tenant It must be borne in mind that the acquisition is in respect of the three flats admeasuring 1794 sq.ft which were converted into one flat in the year 1974. Considering these aspects, it is difficult to interfere with the concurrent findings of fact as regards acquisition of suitable residence. Considering the limited scope of revisional jurisidiction, no interference is called for in the impugned order. Decree will have to be confirmed on the ground of acquisition of suitable residence and therefore it is not necessary to deal with other grounds. Hence, there is no merit in the Revision Application and the same is rejected.

5. At this stage, the learned Counsel for the Revision Applicants prays that ad-interim order passed by this Court may be extended for a reasonable period. The said request is opposed by the Advocate for the Respondent. Considering the facts of the case, decree for possession shall not be executed till 31st August 2007 subject to the condition that the Revision Applicants will not create any third party interests in respect of the suit premises and will not part with possessions thereof in favour of any third party.

JUDGE